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THE
CONDUCT
OF
CADWALLADER COLDEN, ESQUIRE,

LATE
LIEUTENANT-GOVERNOR

OF
NEW YORK:

RELATING TO

THE JUDGES COMMISSIONS, APPEALS TO
THE KING, AND THE STAMP-DUTY.

PRINTED IN THE YEAR M D C C L X V I I .

JOHN CARTER BROWN.

PRICE

THE
CONDUCT
OF
CADWALLADER COLDEN, ESQUIRE.

The People of Great Britain are deeply concerned in the Behaviour of the Governors of their Colonies; to Reward them when they do well, and to Punish when they do otherwise.

WHILE an angry Faction in the Province of *New York* confined their Calumnies of Lieutenant-Governor *Colden* to a common News-Paper, he did not think that they deserved his Notice. The Malice in those Papers is so apparent, they can have no Influence on any Man disinterested in the Dispute. He satisfied himself with laying the
A Reasons

Reasons of his Conduct before his Majesty's Ministers, who are the proper Judges of it. But that Faction having influenced the General Assembly to pass a public Censure on Mr. *Colden's* Conduct, after he had been succeeded in the Administration by Sir *Henry Moore*, he thinks himself loudly called upon, by every Motive which can influence an honest, innocent Man, to vindicate his Character.

Lieutenant-Governor *Colden's* Conduct has been found Fault with in three Instances, and in those only.

First, His refusing to grant the Judges Commissions *during good Behaviour*. Secondly, His supporting a Right to Appeal from the Courts of Common Law, in civil Causes, to the Governor and Council, and from thence to the King in his Privy Council, pursuant to the King's Instructions to his Governor of *New York* for that Purpose. Thirdly, In the Deference which he had to an Act of Parliament for laying a Stamp-Duty in the Colonies.

1. At the same time that the Government of the Province of *New York* devolved on Mr. *Colden*, by the Death of Lieutenant-Governor *De Lancey*, the Office of Chief Justice, which Mr. *De Lancey* likewise held, became vacant. The Appointment of a new Chief Justice was consequently one of the first Things Mr. *Colden* had to think of. The Tenure of Mr. *De Lancey's* Commission was *during good Behaviour*; and the then puisné Judges held their Commissions on the same Tenure. The granting the Judges Commissions in that Manner, was a direct Breach of the King's standing Instructions to his Governor, and contrary to the continued Practice in *New York*, the present Instances only excepted. It was expected that Mr. *Colden* should follow the last Example, and without Regard to his Instructions, should appoint a Chief Justice *during good Behaviour*: but he was immoveably determined to obey the King's Instructions. The puisné Judges had held the Courts without a Chief Justice, while Mr. *De Lancey* executed the Office of Governor; no Inconveniency had been complained of, nor could any now arise, by delaying to appoint a Chief Justice,

while Mr. *Colden* submitted the Matter to his Majesty's Ministers, and waited their Directions. Two of the puisne Judges, under different Pretences, solicited for the Office of Chief Justice. Mr. *Colden* did not know one Man of Distinction in the Place, who thought either of them qualified for the Office. They continued, however, to solicit him strongly for an Appointment; and the Assembly, in their first Sessions after the Administration had devolved on Mr. *Colden*, prepared an Address to him to appoint a Chief Justice *during good Behaviour*. He prevailed upon them to drop the Address, by assuring them that he would lay the Matter before his Majesty's Ministers: which he not only did, but with great Freedom informed them, that the People were uneasy, from an Apprehension that some needy Person in *England* might be appointed Chief Justice of the Province;—that this was much owing to a late Appointment in *New Jersey*, which had given the People in general strong Prejudices. At the same time he suggested to the Ministry, that he hoped the Assembly would be satisfied with the Appointment of a Chief Justice *during the King's Pleasure*, on Condition

Condition that he was enabled to give his Assent to a Law, that no Judge shall be removed or suspended by a Governor, otherwise than by express Command from the King; or by Desire of the Assembly, signified by public Address; or by Advice and Consent of the Council, signified under the Hands of at least Seven of them. This he had mentioned to the Speaker of the Assembly; and is a strong Instance, that while Mr. *Colden* honestly obeyed his Instructions, and supported the Prerogative of the Crown, he was not inattentive to the Security of the People, and the free Administration of Justice.

Very soon after this the Death of the late King was known at *New York*. The Judges thought it necessary to have their Commissions renewed, though they held them then *during good Behaviour*. Mr. *Colden* refused to renew their Commissions otherwise than *during Pleasure*, as he was directed by his Instructions. The Judges declined to take their Commissions on that Tenure, and threatened to shut up the Courts of Justice, by refusing to act, on which a total Failure
of

of Justice might have ensued, though by the King's Proclamation their Commissions were continued in Force until his Majesty's Pleasure should be known; and it was quite agreeable to Mr. *Colden* to let Matters rest as they were until his Majesty's Pleasure was known.

The Assembly, the first Time they met after the King's Death, brought a Bill into their House for making the Tenure of the Judges Commissions *during good Behaviour*, with a Clause that they might be removed by the Governor, on Address from the Assembly; or by Advice of at least Seven of the Council. Mr. *Colden* thought it necessary that they might be removed on the King's Pleasure, signified under his Signet and Sign Manual; and prevailed on the Assembly to postpone the Bill for that Time, while his Majesty's Requisitions for prosecuting the War demanded all their Attention. However, upon this Occasion Mr. *Colden* told some of the Gentlemen of the Council, and Members of Assembly, that if they would make proper Provision for the Judges Salaries to have the same Continuance

tinuance with their Commissions, it would be a great Inducement with him to give his Assent, and might excuse him with his Majesty's Ministers for so doing. He immediately informed the Ministry of the Purport of the Bill that had been brought in by the Assembly; and argued in Favour of the Bill, that, with the Additions he proposed, the Prerogative of the Crown would be preserved, and the arbitrary Proceedings of Governors guarded against.

His Majesty's Service requiring the Assembly to meet again about two Months after, they then passed a Bill, *providing that the Judges of the Supreme Court shall have their Commissions during good Behaviour*; which the Council agreed to—No Provision was made in it for giving the Judges Salaries the same Continuance with their Commissions. They were left depending on the Assembly from Year to Year. Mr. Colden took Time to consider of it, and transmitted a Copy of the Bill to his Majesty's Ministers—A few Months after Mr. Colden renewed his Application to the Ministry on this Subject, and pressed to know his Majesty's
Pleasure,

Pleasure, as he expected the Bill would be insisted on by the Assembly; and as he had been informed that the Judges designed not to sit the ensuing Term, unless their Commissions were renewed *during good Behaviour*, which would lay him under great Difficulties, and might perhaps induce a Necessity of giving his Assent to the Bill, to prevent a total Failure of Justice: On which the Plantation Board, in their Representation to the King, say, "They could not but be of Opinion, that if under these Circumstances Mr. *Colden* should have complied with so pernicious a Proposition, he will justly have deserved his Majesty's royal Displeasure."

In *September* the Assembly had a short Session, upon a Requisition made by General *Amburst*; and no other Business was laid before them, or expected of them at that time. General *Moncton's* Commission of Governor in Chief was then hourly expected. Yet the Council and Assembly again passed the same Bill relating to the Judges Commissions. The Lieutenant Governor again delayed his Assent; informing the Council, that as he had laid the Bill before his Majesty's

esty's Ministers, he must wait at least a reasonable Time for their Directions.

Thus the Affair stood when General *Monckton* received his Commission of Governor in Chief, about a Fortnight before he set out upon his Expedition against *Martinico*. He took the Administration of Government upon him during this short time, and in Council told Lieutenant Governor *Colden*, that the Judges ought to have their Commissions renewed in the manner they formerly had them. If General *Monckton* though this right, he had it then in his own Power, but he did not do it.

Mr. *Prat* arrived at this Juncture, with his Majesty's Mandamus to be appointed Chief Justice of *New York*, during the King's Pleasure, and his Commission was made out accordingly. Mr. *Prat's* Qualifying and Entering upon his Office happily relieved the Lieutenant Governor, when he resumed the Administration upon Mr. *Monckton's* Departure, from the great Difficulties he must have been under, by the other

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Judges

Judges refusing to act upon their old Commissions, or to accept of a new Appointment, unless *during good Behaviour*. For though they really refused to sit, in the Term which commenced immediately after Mr. *Prat's* Arrival, the Courts of Justice received not the least Prejudice or Obstruction thereby—Mr. Chief Justice *Prat* was a Man of distinguished Abilities, Knowledge and Integrity.

Notwithstanding the Assembly knew the Tenure of Mr. *Prat's* Commission was, by direct Command of the King, *during his Majesty's Pleasure*, they in their next Session absolutely refused to grant any Salary to the Chief Justice, or to any other of the Judges, unless their Commissions were *during good Behaviour*. At this time likewise the Assembly sent up the same Bill to the Council, to which the Lieutenant Governor had twice before withheld his Assent. The Council had formerly passed the Bill—they had now a Conference with the Assembly, to get them to add a Clause to make the Judges Salaries of the same Continuance with their Commissions, but without Effect; whereupon
the

the Council refused their Concurrence to the Bill.—The Assembly were as much resolved that the Judges should be *dependant* on them, as that they should be *independant* of the Crown. The Lieutenant Governor had not now the disagreeable Task of refusing his Assent to a Bill passed by the other Branches of the Legislature : But he gave a full Account of all that had happened, to his Majesty's Ministers ; and observed, that the Obstinacy with which the Assembly persisted to contend that the Judges Commissions should be *during good Behaviour*, and to refuse to make their Salaries of the same Continuance, might justly create Suspensions of a designed undue Influence, as much to be dreaded by the People, as prejudicial to the Prerogative of the Crown. The Lords of Trade and Plantations, in a Representation to the King on this Subject, observe, that “ the People in *New York* were strenuous to have the Judges Commissions *during good Behaviour*, alledging the Precedent and Example of the Mother Country. It was not, however, say their Lordships, by the Tenure of their Commissions only that the Judges were rendered independent, but such Salaries

were settled upon them, as not only rendered them less liable to be corrupted, but was an Encouragement for the ablest Men to engage in that Profession which qualified them for such high Trusts."

The *February* following, the Lieutenant-Governor received his Majesty's additional Instruction to his Governor of *New York*, commanding him that he "do not, on any Pretence whatsoever, upon Pain of being removed from his Government, give his Assent to any Act, by which the Tenure of the Judges Commissions shall be regulated or ascertained in any Manner; and that all Commissions to the Judges shall be during Pleasure only."

This Instruction put an End to the Dispute; the Judges are appointed during Pleasure, and the Assembly gives them Salaries from Year to Year.

The Obedience due to the King's Command is certainly of itself a sufficient Justification of Lieutenant-Governor *Colden's* Conduct on this Occasion: But besides this, he
was

was influenced by a Consideration, of the due Administration of Justice to the People under his Care. Perhaps no Man could be found in the Province of sufficient Abilities and Knowledge in the Law, and free from Family and Party Connections, or from being interested in similar Cases, so far as to be esteemed truly disinterested in any Cause of Consequence, relating to Lands which might come before him. For some Years past, not more than one Judge has sat on any Land Trial of Consequence, the others being disabled from sitting by their being interested. It is said there is a Cause now depending, on which none of the Judges can sit, all being interested. By granting Commissions to Men not duly qualified *during good Behaviour*, the King is disabled, during their Lives, to appoint others, and Justice must continue to be executed in the Province under very great Disadvantages.

The Power of an ambitious Chief Justice *during good Behaviour*, appeared to the Lieutenant-Governor to be very dangerous to the Authority of the Crown, and to the Property and Safety of the People. In this Province,

vince, where there are few Men of liberal Education, or who with any Attention apply their Thoughts to Matters of public Concern, an ambitious Judge has great Temptations to form Combinations with the Gentlemen of the Bar. This, with a Family Interest and its Connections, may prove too strong for the weak Power of the Administration in *New York*. The Gentlemen of the Law are in the Secrets of the most considerable Families, by which they obtain a general Influence. Every Man is afraid of the ruinous Expence of a tedious Law Suit. However careful a Man may be in his Conduct, he cannot think himself secure from Law Suits, while he may have an avaricious and malicious Neighbour. The Law, which ought to be the Safeguard of the People, is become a Terror to honest Men ; and this could not be, were the Judges no way to blame.

The Lords of the Plantation Board, in a Representation to the King on this Subject, observe, that “ for want of such an Establishment as might induce able Persons to offer their Service, a Governor may be obliged
to

to confer the Office of Judge upon those who accept it merely with a View to make it subservient to their private Interests, and who, added to their Ignorance of the Law, may become the Partizans of a factious Assembly, upon whom they are dependent for their Support, and who may withhold or enlarge that Support, as the Conduct of the Judge is more or less favourable to their Interests.

“ It is difficult (say their Lordships) to
 “ conceive a State of Government more
 “ dangerous to the Rights and Liberties of
 “ the Subject; but aggravated as the Evil
 “ would be, by making the Judges Com-
 “ missions during good Behaviour, without
 “ rendering them at the same time inde-
 “ pendent of the factious Will and Caprice
 “ of an Assembly, we cannot but consider
 “ the Proposition as subversive of all true
 “ Policy, destructive to the Interests of
 “ your Majesty’s Subjects, and tending to
 “ lessen that just Dependence, which the
 “ Colonies ought to have upon the Govern-
 “ ment of the Mother Country.”

These

These Arguments militate with great Force against appointing the Judges during good Behaviour, and every disinterested Man in the Province must allow they have much Weight. The Arguments likewise against the Judges holding their Offices at the Pleasure of a Governor, are not inconsiderable. Mr. *Colden* saw their full Force, and while the Assembly were guarding against this, he hoped to bring about a Measure, which might at the same time guard against the arbitrary Proceedings and undue Influence of an Assembly, and render the Judges as independent as could be desired by honest Men. But the Assembly continued obstinately determined to keep the Judges dependent on them, while they contended to have them independent of the King.

A circumstantial Account has been given of Lieutenant-Governor *Colden's* Conduct, in this Affair of the Judges Commissions; for from the Disappointment which some powerful Men in the Province met with in this Instance, arose a Resentment which has not subsided since that Time.

His

His Majesty's additional Instruction having silenced the Contest about the Judges Commissions, the Lieutenant-Governor's Administration continued from that Time without any apparent Dissatisfaction, until an Incident, in *October* 1764, brought on that Part of his Conduct which has been principally blamed; and on which Occasion no Artifice has been omitted to raise most violent Prejudices, by the loudest Clamours and most virulent Calumnies; *viz.*

2dly, The Lieutenant-Governor's supporting a Right to appeal from the Courts of Common Law, in civil Causes, to the Governor and Council, and from thence to the King in his Privy Council, pursuant to the King's Instructions to his Governor of *New York* in the following Words:

32. " Our Will and Pleasure is, that
 " you, or the Commander in Chief of our
 " said Province for the Time being, do in
 " all civil Causes, on Application being
 " made to you, or the Commander in Chief
 " for the Time being, for that Purpose,
 " permit and allow Appeals from any of
 C " the

“ the Courts of common Law in our said
 “ Province, unto you, or the Commander
 “ in Chief, and the Council of our said
 “ Province; and you are for that Purpose
 “ to issue a Writ, in the Manner which has
 “ been usually accustomed, returnable be-
 “ fore yourself and the Council of our
 “ said Province, who are to proceed to hear
 “ and determine such Appeal; wherein such
 “ of our said Council as shall be at that
 “ Time Judges of the Court from whence
 “ such Appeal shall be made to you our
 “ Captain-General, or to the Commander
 “ in Chief for the Time being, and to our
 “ said Council as aforesaid, shall not be ad-
 “ mitted to vote upon the said Appeal; but
 “ they may, nevertheless, be present at the
 “ Hearing thereof, to give the Reasons of
 “ the Judgment given by them in the Causes
 “ wherein such Appeal shall be made.

“ Provided nevertheless, That in all such
 “ Appeals, the Sum or Value appealed for
 “ do exceed the Sum of Three hundred
 “ Pounds Sterling; and that Security be first
 “ duly given by the Appellant to answer
 “ such Charges as shall be awarded, in case

“ the first Sentence be affirmed; and if
 “ either Party shall not rest satisfied with
 “ the Judgment of you, or the Commander
 “ in Chief for the Time being, and Coun-
 “ cil as aforesaid, our Will and Pleasure is,
 “ that they may then appeal unto us in our
 “ Privy Council, provided the Sum or Value
 “ so appealed for unto us exceed Five hun-
 “ dred Pounds Sterling, and that such Appeal
 “ be made within Fourteen Days after Sen-
 “ tence, and good Security given by the
 “ Appellant, that he will effectually prose-
 “ cute the same, and answer the Con-
 “ demnation, and also pay such Costs and
 “ Damages as shall be awarded by us, in
 “ case the Sentence of you, or the Com-
 “ mander in Chief for the Time being, and
 “ Council, be affirmed. Provided never-
 “ theless, where the Matter in Question re-
 “ lates to the taking or demanding any
 “ Duty payable to us, or to any Fee of
 “ Office, or annual Rent, or other such-like
 “ Matter or Thing, where the Rights in
 “ future may be bound, in all such Cases
 “ you are to admit an Appeal to us in our
 “ Privy Council, though the immediate
 “ Sum or Value appealed for be of less
 C 2 “ Value.

“ Value. And it is our further Will and
 “ Pleasure, that in all Cases where, by your
 “ Instructions, you are to admit Appeals
 “ to us in our Privy Council, Execution be
 “ suspended, until the final Determination
 “ of such Appeals, unless good and suffi-
 “ cient Security be given by the Appellee
 “ to make ample Restitution of all that the
 “ Appellant shall have lost by means of such
 “ Judgment or Decree, in case, upon the
 “ Determination of such Appeal, such De-
 “ cree or Judgment should be reversed, and
 “ Restitution awarded to the Appellant.”

33. “ You are likewise to admit Appeals
 “ unto us in Council, in all Cases of Fines im-
 “ posed for Misdemeanors, provided the Fines
 “ so imposed amount to or exceed Two hun-
 “ dred Pounds Sterling, the Appellant first
 “ giving good Security that he will effec-
 “ tually prosecute the same, and answer the
 “ Condemnation, if the Sentence by which
 “ such Fines were imposed shall be con-
 “ firmed.”

On the Force of the 32d Instruction, an
 Appeal was brought in *October* 1764, from
 a Verdict

a Verdict and Judgment in the Supreme Court of Common Law, to the Governor and Council, for excessive Damages given by the Jury in a Case of Assault and Battery.

It may deserve Notice, that the Defendant, before he brought his Appeal, conceiving that the Jury had been partial in giving excessive Damages, moved the Court to have a new Trial, but was refused. He had then no other Remedy but by Appeal. He was at the same time under Prosecution by Indictment for the same Offence, which subjected him to an exemplary Fine, at the Discretion of the Judges.

The Judges of the Supreme Court having refused the Appeal, and to allow any Entry to be made of it on their Minutes, the Lieutenant-Governor sealed a Writ, which the Defendant brought for removing the Cause before the Governor and Council, telling him that he took it at his Peril, and that it would be quashed if it was erroneous.

Between

Between the Time of issuing the Writ and the Return of it, several Incidents made it apparent that the Gentlemen of the Council were predetermined to reject the Appeal. The Lieutenant-Governor was therefore desirous that the Dispute should pass the Court of the Governor and Council in the easiest and shortest Manner possible, that the final Determination of it might be made by Persons much more capable of judging in such a Case, than the Governor and Council of *New York* can be supposed to be. But this did not suit the Purpose of those who opposed Appeals.—They placed their chief Hope in the popular Clamours to be excited on this Occasion, and it was not in the Lieutenant-Governor's Power to prevent it.

In this Case of the Judges refusing an Appeal from them, they were to inform the Governor and Council of their Reasons. The Lieutenant-Governor expected that this would have been done in private, and that they were at any time prepared to give their Reasons in clear and distinct Terms. They required Time, however, for this Purpose, and had Time, and further Time repeatedly granted

granted them, to draw up their Reasons in Writing. At last they produced long Declarations, adapted more to the Passions of the Audience than the Information of the Court, each of the Judges separately making an Harrangue, and at several Sittings of the Court.

After the Judges had finished what they had to say, the Lieutenant-Governor proposed to inquire into the true Intention of the Instruction, from the Words of the Instruction itself; but this seemed to be designedly evaded by the Gentlemen of the Council. At last, that every Part of the Lieutenant-Governor's Conduct might appear open and fair, he communicated to the Council the Reasons which had induced him to think that the Instruction was really intended to establish a Court of Appeals upon the whole Merits of the Cause, and not a Court of Errors only to correct the Errors in the Proceedings of the Courts of Common Law. He had formed short Notes of what he intended to mention, which he held in his Hand to assist his Memory. The Gentlemen of the Council repeatedly desired a
Copy

Copy of this Paper for their Deliberation, to which the Lieutenant-Governor consented; expressly declaring, when he gave the Copy, that he did it in Confidence that no other Use would be made of it, but for their own private Deliberation. After the Delivery of this Paper, the Court, under several Pretences, was repeatedly adjourned, until a Paper was prepared by the Lawyers, in Opposition to Appeals, in Answer to every Argument in the Lieutenant-Governor's Notes; and concluded with a formal Judgment of the Court, by dismissing of the Appeal. This Paper the Gentlemen of the Council adopted as their own, and unanimously ordered it to be read.

The Lieutenant-Governor repeatedly complained of the Indecency and Disingenuity of this Proceeding: that such a Paper should be openly read, without previously communicating it to him: determining on Arguments which he had only proposed for their joint Deliberation with him:—making themselves Parties in Opposition to him;—and giving a Judgment of Court by themselves, without his Participation, when by
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the Constitution of the Court it could not be held without him. Some of the Council became sensible of the Absurdity of their Proceedings, and desired to withdraw their Paper; after which, the Court was adjourned to the next Day. The Behaviour in all the Proceedings was so indecent, that several Persons present thought the Lieutenant Governor too passive.—He had a difficult Part to act, when they, who ought to have assisted him, laid Snares to surprize him.

At the next Meeting, the Lieutenant-Governor, without taking the least Notice of what had happened the Day before, proposed the following Question:

“ Whether by the 32d Instruction the
 “ King has directed his Governor to permit
 “ and allow Appeals, in all civil Causes, from
 “ the Courts of Common Law within this
 “ Province; and whether the King, by the
 “ same Instruction, has directed his Gover-
 “ nor and Council to hear and determine
 “ such Appeals?”

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Where-

Whereupon the Council declared, “ that
 “ as the King’s Judges, and the most able
 “ Council in the Law in the Province, have
 “ given their Opinion, that no other than
 “ an Appeal in Error can lay by this In-
 “ struction, they are unanimously of Opi-
 “ nion, that no other than an Appeal in
 “ Error is the Intention or Meaning of the
 “ Crown by this Instruction, and that they
 “ cannot take Cognizance of any other Ap-
 “ peal.”

It is evident the Gentlemen of the Council did not determine by any Judgment in themselves, but by their Faith in others.

The Lieutenant-Governor entered his Dissent to this Opinion, declaring he would transmit his Reasons to the King’s Ministers. The Gentlemen of the Council desired the Paper, which had been read the Day before, might be entered as the Reasons of their Judgment, leaving out that Part in which they had passed Judgment; which the Lieutenant-Governor did not oppose, that they might not have the least Room to complain,
 though

though he thought the doing it in that Manner very improper and irregular.

It is proper to observe, that while this Dispute was depending before the Governor and Council, and before any Judgment was given, the Harangues of the Judges were printed in a common News-Paper, which could not be done without their Privity. For what Purpose this was done is too evident. It may have had an improper Influence on the Members of the Court.

Soon after the Determination, a weekly Paper, called *The Centinel*, was published, in which the most shameful Attempts were made to asperse the Lieutenant-Governor's Character, by such indirect Insinuations as the most innocent Man could not answer. The Depravity of the Author's Heart was so apparent, that his Scurrility could hurt no Character with Men of Sense, whatever it might with the lowest of the People, for whom it only could be intended; it was therefore passed over without the least Notice taken of it.

But as no Pains nor Industry has been omitted to prejudice the Lieutenant-Governor's Character, not only with the People of the Province of *New York*, but likewise in *Great Britain*, by transmitting the Papers published in *New York*, it is thought necessary that the Lieutenant-Governor's Reasons for supporting of Appeals be likewise published; from which it is hoped it will at least appear, that if he has erred in his Judgment, he has not otherwise than the most innocent Man may, after the most honest Endeavours to inform himself truly. He in no Shape or Manner concerned himself in the Dispute, after the Determination of the Council, otherwise than by transmitting the Proceedings of the Court to his Majesty's Ministers, and the Reasons of his Dissent from the Judgment of the Council.

It was allowed that the Words of the Instruction plainly import an Appeal on the whole Merits, especially on considering the subsequent Instruction; in which Case, the Verdict of the Jury becomes necessary to be inquired into, otherwise, as in the present Case of excessive Damages, the proper Relief

lief cannot be given : but it was insisted that
 no Relief by Appeal can be legally obtained
 against a Verdict, and that the only Relief in
 Error is against the erroneous Proceedings of
 the Court, or Determinations of the Judges.
 In Proof of which, the constant Practice of
 the Courts at *Westminster* was insisted on ;
 and therefore the Instruction must receive
 such Construction as may make it consistent
 with Law : but no Construction of Words
 can make this Instruction consistent with the
 Practice of the Courts at *Westminster*, in
 Error. It may well be doubted whether
 the Practice of the Courts at *Westminster*
 make a Law for the Colonies. If this were
 to be allowed, perhaps there is not one le-
 gal Court in any of the Colonies, and all the
 Proceedings in them are erroneous. The
 Supreme Court in *New York* has the Powers
 of the King's Bench, Common Pleas, and
 Exchequer, which, according to the Practice
 of the Courts at *Westminster*, would be ab-
 surd to exist in the same Court. The King
 is the Fountain of Justice, and it has been
 a received Opinion, that the King may erect
 such Courts of Justice in the Colonies, as he
 shall think requisite for the Distribution of
 Justice ;

Justice; in which the Rules of Proceeding may, from their different Circumstances, be unavoidably different from the Practice of the Courts at *Westminster*, and at the same time consistent with the Laws of *England*. The Lieutenant-Governor thought it inconsistent with the Trust reposed in him, to acquiesce in having this Power of the Crown called in Question, and more particularly as to Appeals to the King; since in every Charter of Government, they are expressly reserved, and complied with in several of the Colonies, particularly in *Massachusetts Bay*.

At *Westminster* the Removal, in Cases of Error, is to Judges eminent for their Knowledge in the Law; but if the Governor and Council were to correct the Errors in the Proceedings and Determinations of the Judges, it would be a Removal from Persons skilled in the Law, to others who never made it their Study, and profess no Knowledge in it: and yet these may be good Judges, better than common Juries, of the Merits of a Cause.

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The Lieutenant-Governor is not a Lawyer, but under a Necessity of judging in this Dispute; because the Court could not be held without him. He therefore thought it safest to form his Judgment on the general Principles of Justice, understood by Men of common Sense. In the present Complaint of excessive Damages given by a Jury, no Redress can be had, however enormous the Damages, without reversing the Verdict. Every Man conversant in the Courts of Common Law in *New York*, will allow that numerous iniquitous Verdicts have been given in them. Every Evil ought to have a Remedy: and in natural Justice, an iniquitous Verdict ought to be reversed. It is said that in such Case the Judge will give a new Trial. He then, by his single Authority, sets aside a Verdict, and renders it null. What Law has given the Judge this Power? The Judges are allowed to assume a Power to set aside a Verdict at their Pleasure, and it is denied that the King can appoint a Court to inquire into the Justice of any Verdict. Appeals to the King are as old as the Constitution, when Juries, by the Common Law, were the sole Judges both of Law and Fact:
and

and it is said they are so at this Time; because they are not obliged to follow the Directions of the Judges. There is no Relief, it is affirmed, against an iniquitous Verdict, but this of the Judges giving a new Trial. If he refuse, no Error can be assigned; because there is no Law to warrant his doing it, and it wholly depends upon his Pleasure. It is not easy to conceive that such a Constitution can subsist in a well-regulated and free Government; and a Man, at least one who is no Lawyer, may doubt of its being so by the Constitution of *England*.

Chief Justice *Hales*, in his History of the Common Law, makes the following memorable Remark of the State of the Courts of Justice in the several Counties in *England*, when the Property of the Subject was determined in those Courts. His Words are: — “ All the Business of any Moment
 “ was carried by Factions and Parties: for
 “ the Freeholders being generally the Judges,
 “ and conversing one among another, and
 “ being, as it were, *the Chief Judges not*
 “ *only of the Fact, but of the Law*, every
 “ Man that had a Suit there sped as he
 “ could

“ could make Parties ; and Men of great
 “ Power and Interest in the County did
 “ easily overbear others in their own Causes,
 “ or in such wherein they were interested,
 “ either by Relation of Kindred, Tenure,
 “ Service, Dependence, or Application.”

The Colonies, while all the Judges, and all the Officers of Justice in each Colony, are taken from among themselves, are precisely in the same State with the Counties in *England*, at the Time mentioned by Judge *Hales*. The Dissatisfaction that appears among great Numbers of People in *New York* with the Proceedings of the Courts of Justice, gives a strong Presumption that similar Causes have produced similar Effects there.

Several Families in *New York* are possessed of Lands of great Extent, greater than those of any Subject of *England*; some of them setting up boundless Claims. They are connected by Relation and Kindred with the Gentlemen of the Law, both on the Bench and the Bar, most of whom are themselves interested in one or other of the great Land Patents—They have formed still larger Con-

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nections by Party Interests. It is not then improbable that Combinations may be made between the Bench and the Bar, whereby partial Juries may be procured, wholly influenced in favour of such great Interests. In such Case, Property must become precarious to People of different Interests from them; and the Men of such Interest will evade, if possible, any Appeal to a Judicatory where they can have no such Influence. Supposing this to be the State of the Courts of Justice in *New York*, it may not be difficult to give a Reason for the violent Proceedings in Opposition to Appeals.

The King's Authority and his Rights are only secured by his Courts of Justice. If no Appeal is allowed from the Courts of Justice in the Colonies, they must be finally determined there; in which Case they may become precarious, and the Dependence on the Mother Country may become dubious, otherwise than by military Force.

These Remarks will be confirmed, by considering the State of the Courts of Justice, as set forth in Mr. *Smith's History of New York*.

York.—No Man knows the Practice of the Courts better. His Words are, Page 243:

“ The State of our Laws opens a Door
 “ to much Controversy. The Uncertainty
 “ with respect to them renders Property
 “ precarious, and greatly exposes us to the
 “ arbitrary Decisions of bad Judges. The
 “ Common Law of *England* is generally
 “ received, together with such Statutes as
 “ were enacted before we had a Legislature
 “ of our own. But our Courts exercise a
 “ *Sovereign Authority* in determining what
 “ Parts of the Common Law and Statute
 “ Law ought to be extended: for it must
 “ be admitted, that the Difference of Cir-
 “ cumstances necessarily requires in some
 “ Cases to reject the Determinations of both.
 “ In many Instances they have also ex-
 “ tended even Acts of Parliament passed since
 “ we had a distinct Legislation, which is
 “ adding greatly to our Confusion. The
 “ Practice of our Courts is not less uncertain
 “ than the Law. Some of the *English*
 “ Rules are adopted and others rejected.”

On considering the King's Instruction for admitting of Appeals, Mr. *Smith* makes the following Remark, Page 252:

“ Before the Arrival of Sir *Danvers Os-*
 “ *born*, Appeals were given to the Go-
 “ verner and Council in all Causes above
 “ One hundred Pounds Sterling. By this
 “ Instruction the Power of the Supreme
 “ Court, and of the Governor and Council,
 “ is prodigiously augmented. In this in-
 “ fant Country, few Contracts are equal to
 “ the Sums mentioned in the Instruction ;
 “ and therefore an *uncontroulable* Authority
 “ in our Courts may be dangerous to the
 “ Properties and Liberties of the People.
 “ Proper Checks upon Judges preserve
 “ them both from Indolence and Corrup-
 “ tion.”—Such were the cool Thoughts of
 this Gentleman in his Clofet, before he was
 influenced by Party and Faction.

The only Conclusion at present drawn
 from the Whole is, that Lieutenant-Gover-
 nor *Colden* may have supported the Right of
 appealing to the King, with an honest Heart
 and

and a sincere Sense of his Duty, against (in his Opinion) a dangerous Faction.

On the 10th of *July* 1765, this Appeal was, by the Claimant's Petition, brought before the King in his Privy Council, and referred to the Right Honourable the Lords of the Committee of Council for hearing of Appeals from the Plantations; who reported their Opinion on the 17th of the same Month; and on the 26th his Majesty was pleased to confirm their Report, and to order "that the Petitioner be admitted to bring his Appeal from the said Verdict and Judgment of the Supreme Court, &c. whereof the Governor, Lieutenant-Governor, or Commander in Chief of his Majesty's Province of *New York* for the Time being, and all others whom it may concern, are to take Notice, and govern themselves accordingly."

The Lieutenant-Governor received this Order on the 4th of *October* following, and having communicated it to the Council, ordered it to be entered on the Minutes of Council, and the Original to be lodged in
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the Secretary's Office. By this Judgment of the King in his Privy Council, the Judgment of the Court of the Governor and Council is reversed, and the Opinion of the Lieutenant-Governor, signified by his Dissent, is confirmed. The most violent Resentment of the Faction, which governs the Courts of Judicatory in this Province, arose against the Lieutenant-Governor in Consequence of it. They, taking Advantage of the general Abhorrence against the Stamp Act, and which had been raised by the inflammatory Papers daily published, turned the Edge of the popular Fury against the Person of the Lieutenant-Governor, which before that Time they had not been able to do.

The Lieutenant-Governor had called the Assembly to meet him on the 13th of *November*, the Day on which Sir *Henry Moore* arrived with the King's Commission of Governor in Chief. The Fifth Day after Sir *Henry* arrived, the Lieutenant-Governor retired to his Country-House, at about Fifteen Miles from the City, where he has remained, without intermeddling in the public Affairs.

From

From the Proceedings of the Assembly, printed by Order of their Speaker, it appears that on *Saturday*, the 14th of *December* 1765, before Noon, the Assembly having read Seven several Bills, and the Report of a Committee, and made Orders on them severally, they resolved that the grand Committee for Courts of Justice be *revived*. From this it appears, that this Committee, before that Time, had been dismissed, as having nothing to report before them.—The House immediately resolved itself into a Committee, when a very long circumstantial Report was formed, read, and agreed to by the House: and immediately on the Speaker's taking the Chair, was again read, and reported by the Chairman:—was read a third Time, and approved by the House. In consequence of which, the Assembly, in the same Sitting, before Noon, made Nine several Resolves on the Subject of Appeals. Whoever considers the Business gone through at this Sitting, before Noon, must believe that no Time was allowed to the Committee to deliberate on their Report, though consisting of numerous Particulars and Circumstances; or to the Assembly afterwards to deliberate

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on the Resolves they made; not even sufficient Time to put them in Writing; and therefore must conclude, that the Report of the Committee, and subsequent Resolves of the Assembly, were brought into the House previously formed in Writing without Doors, and hastily agreed to without Deliberation.

For the present Purpose, Three of the Nine Resolves only require particular Notice; *viz.* the Third, Fourth, and Fifth, in the following Words:

“ *Resolved,*

“ That the late Attempt to introduce
 “ such Appeal (from the Verdict of a Jury
 “ to the King and Privy Council) was il-
 “ legal, an Attack upon the Rights of the
 “ Subject, and a dangerous and mischievous
 “ Innovation, tending to encourage Liti-
 “ giousness and Delay, promote Perjury,
 “ prevent Justice, subject the People to ar-
 “ bitrary Power, and ruin the Colony.

“ *Resolved,*

“ That it appears to this House that *Cad-*
 “ *wallader Colden*, Esquire, the Lieutenant-
 Governor

“ Governor of this Colony, has, to the ut-
 “ most of his Power, endeavoured to give
 “ Success to that dangerous Machination, so
 “ naturally destructive of the Peace and Se-
 “ curity of the Subject.

“ *Resolved,*

“ That the Conduct of the Lieutenant-
 “ Governor has filled the Minds of his Ma-
 “ jesty’s Subjects in this Colony with Jea-
 “ lousies and Distrust, to the great Prejudice
 “ of the public Service, and the Repose of
 “ the Inhabitants.”

As to the First of these Resolves, it must be manifest, on the least candid Reflection, that trying a Cause over again by Appeal, cannot encourage Litigiousness and Delay, or promote Perjury and prevent Justice, more than a new Trial granted at the Pleasure of a Judge; or new Trials on Ejectments in the same Case, frequently brought in the Courts of Common Law. And if the Evidence given to the Jury were to be put in Writing, as, it is said, is done in the neighbouring Government of *Massachusetts Bay*, a great Advantage must thence arise to the

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Jury, in considering the Evidence, after a Hearing of Twenty-four Hours, frequent in Land Trials. Some Men would swear more cautiously, knowing that what they said would be committed to Writing: Perjury would thereby be discouraged and detected, and Justice promoted.

Appeals from the Plantations are heard before a standing Committee of the Privy Council, of which some of the Judges are always Members; and they are finally determined before his Majesty in his Privy Council. What Answer is to be made to the bold Assertion, that their Determinations are arbitrary, and would be ruinous to the Colony?

As to the Second of the above Resolves, it may be observed that, by the Constitution of the Government of *New York*, the Assembly have no judicial Authority; and their Determination was made on a partial Representation of one Side of the Question, without desiring to know what might be said on the other Side. The Question of Appealing came judicially before the Lieutenant-Governor,

nernor, in a Court which could not be held without his being present. He gave his Opinion, after mature Deliberation, and submitted it to the King in his Privy Council. This is the utmost the Lieutenant-Governor did to give Success to the *Machination*. He may have erred innocently. He took no irregular Step to inforce his Opinion; nor is he charged with having done so in any one Instance; which, without Doubt, would not have been omitted, had he done any thing to give a Colour to such a Charge.

What Principles must Men be actuated by, who can calmly make such Accusations? at a Time when the Spirit of Mobbing was up, and the Lives and Estates of innocent Men, in several Instances, were most dangerously exposed to the Fury of the deluded Populace! — That the Lieutenant-Governor preserved either his Life or Fortune, so accused, and so pointed out, at such a Time, must be owing to the private Character which he had established in near Fifty Years Residence among the People!

As to the last of these Resolves, it may be true, that an overbearing Faction in the Assembly, and in the Courts of Justice, may have entertained Jealousies and Distrust of the Right of Appealing, as destructive of their Power. But it is certain, a Distrust of much more Consequence to the Peace and Interest of the Colony prevails among the People, of the Courts of Justice, and a Jealousy of a powerful Combination in favour of the enormous Claims of the great landed Men; it may be a Question whether this has not already produced much Disturbance and Disquietude in the Province. Great Numbers of Farmers, and People of Estates and Families, have lately broke out into a riotous and tumultuary Defence of their Property and Possessions, which could not be suppressed without the Assistance of a military Force. The Power of the Civil Authority alone must have been sufficient, had there not been a general Jealousy of a powerful Combination in the Courts of Justice, in favour of the extravagant Claims of the great landed Men.

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They who know the Members of the Assembly personally, will be ready to excuse the greater Number of them, as being innocently seduced into these Resolves, on Matters which they did not understand, by the plausible Arguments of some of their Members, greatly interested in the Disputes occasioned by the enormous Claims of the great Land Patents.

These Resolves greatly affect the King's Authority, and the Rights of his Crown; for they are only secured by his Courts of Justice. If the Extent of the King's Authority be finally determined by the Courts in the Colonies, it may become precarious. The Interest of the People in *Great Britain* likewise, must be equally affected by the Colonies assuming the Right of judging of the Merits of the Officers of the Crown, and of Punishing and Rewarding. It is said, that the Errors of the Judges may be corrected in the usual Manner by Writ of Error; but the usual Method in Error is not to the King in his Privy Council; and our Lawyers and our Assembly may declare this Method to be illegal, because not conformable to the

Practice at *Westminster*. If there should be a Combination among the Officers of the Courts of Justice, to bring every Cause, in which the King's Rights are concerned, to a general Verdict, no legal Error can be assigned in the Judgment, however iniquitous the Verdict be. Lastly, it gives a strong Presumption that a powerful and dangerous Faction does subsist, when they endeavour to carry their Point by publick Clamour and virulent Calumny; the only Means by which a bad Cause can be carried, and which no honest Man will make use of.

3dly, The only remaining Part of Lieutenant-Governor *Colden's* Conduct which has been blamed, is the Deference which he had to an Act of Parliament for imposing a Stamp-Duty in the Colonies. Though the Faction, in Opposition to the Lieutenant-Governor, made use of the Ferment excited in the Minds of the Populace, by the inflammatory Papers daily published, to turn the Rage of the Mob personally against the Lieutenant-Governor, yet his Conduct on that Occasion had little Share in the Resentment of those who excited and conducted the Tumults; and

and after he had retired from the Administration, the People never shewed the least Resentment personally against him.

Soon after the Stamp Act had passed, printed Copies of it were brought over to *America*. The Act was reprinted in this Province, and in some other Colonies, and for some Time no Doubt was entertained of its taking Place. The Printers published their Almanacks for the ensuing Year some Months earlier than usual, with a View to sell them before the Time at which the Act was to take Place: and in these Almanacks the several Things subjected to a Stamp-Duty were placed in alphabetical Order, for the Conveniency of the Inhabitants. Though some inflammatory Papers began soon to appear, they seemed for a considerable Time to be little regarded. These Papers alone could not have had the Effect afterwards produced, had not some in high Trust privately promoted the most violent Proceedings. The common People had not felt any Uneasiness from the Stamp-Duty, and never of themselves could have felt any; and therefore, unless they had been insti-
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gated by others, would never have expressed any Uneasiness.

The Lieutenant-Governor and the Gentlemen of the Council went, as usual, to their Country Houses during the Summer Heats. Mr. *McEvers* entered into a Bond, before the Lieutenant-Governor, at his Country House, in *August*, for the due Performance of his Office of Distributor of Stamps. People remained quiet until after the Riots at *Boston*, and the Meeting of the Committees of the several Colonies at *New York*.

In the Beginning of *September*, the Lieutenant-Governor received a Letter from General *Gage*, Commander in Chief of his Majesty's Army in *America*, complaining of the treasonable Papers daily published, filled with Falshoods, in order to excite the People to revolt: and that this was done not only with Impunity, but without any Notice taken of the Authors and Printers; concluding with an Offer of any military Assistance which should be thought necessary. About the same Time the Lieutenant-Governor received a Letter from Mr. *McEvers*, wherein he

he resigned his Office of Distributor of Stamps, and desired the Lieutenant-Governor to take Care of the stamped Papers and Parchments, when they arrived; declaring at the same Time, that his Person and Effects were threatened in such Manner, that he durst not execute his Office.

The Lieutenant-Governor immediately returned to Town. On his Arrival, he found that two Companies of the Artillery Regiment had arrived from *England*, and were ordered into the Fort, together with several Pieces of Ordnance, Ammunition, and military Stores necessary for its Defence. This was done without any Direction from the Lieutenant-Governor, and in truth without his Knowledge.

The Lieutenant-Governor called the Council, and laid the General's Letter and Mr. *M'Ever's* Resignation before them. As most of the Gentlemen of the Council were then in the Country, those present declined to give any Advice, till the others were called in. In a few Days a full Council met. The Magistrates of the City were

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called in to give their Opinion. Both the Council and the Magistrates were of Opinion, that there was not the least Danger of any Riot; and that the calling in military Assistance would shew unnecessary Diffidence of the People. The Lieutenant-Governor submitted to this Advice, though he could not free himself from some Doubts. He then was and still is of Opinion, that had the Gentlemen of the Council, the Judges, and the Magistrates, heartily joined their Endeavours to prevent any Riot or Mob, none had happened in the City of *New York*.

It having been openly and repeatedly declared, that the Mob was resolved to destroy the stamped Papers and Parchments, and that they would put this Design in Execution before the Ship came near the Town; the Lieutenant-Governor desired the Captains of his Majesty's Ships, then in the Harbour, to take the proper Methods to guard against such Design. The Captains immediately complied; and when the Ship arrived with the stamped Paper on board, she was brought to an Anchor under the
Command

Command of the Frigates and the Guns of the Fort. But the Packages of Stamps were so intermixed with the other Goods, that it was impossible to get them out of the Ship, without unloading a great Part of the Cargo: the Lieutenant-Governor therefore told the Master and Owner of the Ship, that they might carry her to the Wharf, and that he would direct the Mayor of the City to protect her, until the stamped Papers were landed. On which both of them remonstrated, that thereby the Ship, and all the Goods on board, would be in imminent Danger of being destroyed; and therefore, in Behalf of themselves and all the Freighters, requested that he would desire the Frigates to assist in removing the Goods, until the stamped Papers could be taken out. This was accordingly done, and the Packages of Stamps were brought on Shore at Noon-day, and carried into the Fort, without any Guard, and without the least Molestation from any Person in the Town. The Demagogues were not apprised of this, and the People of themselves were quiet.

Between this, and the First of *November*, the Lieutenant-Governor frequently passed through the Streets in his usual Manner, without the least Appearance of Disrespect or Insult offered to him.

Certain Advice had been received that Sir *Henry Moore*, the new Governor, had sailed from *England*, and his Arrival was every Hour expected. The Lieutenant-Governor thought it would not be necessary for him to take the Oath enjoined on all Governors by the Act of Parliament to be taken on or before the last Day of *October*. But the new Governor not arriving on that Day, the Lieutenant-Governor in Council took the Oath as required by the Act of Parliament. It is true one of the Judges gave his Opinion, that as the Act of Parliament had not been transmitted, as usual in such Cases, to the Governor, by any of his Majesty's Ministers, and as he had received no Directions relative to the Execution of that Act, he was under no Obligation to take the Oath : But as that Act was notoriously known and published in the Province, the Lieutenant-Governor could not pretend Ignorance

norance of it ; and he was of Opinion, that every Man is obliged to yield Obedience to a public Law ; and so thought every Governor on the Continent ; they were all in the same Situation, and all took the Oath before the First of *November*.

Soon after the Lieutenant-Governor had taken the Oath, the first personal Disrespect to him appeared. Placarts were fixed up in the Merchants Coffee House, and at the Corners of the Streets, upbraiding the Lieutenant-Governor for having, as it was styled, *bound himself by an Oath to be the chief Murderer of the Rights and Privileges of the People ; to be an Enemy to his King, his Country, and Mankind ;* and threatning to bring his *grey Hairs* to the most ignominious Death, in case he attempted to put that Law in Execution: In consequence of which, that egregious Insult on the Person of the Lieutenant-Governor, and on the Government, happened in the Evening of the First of *November* : An Account of which was published in all the News-Papers in *America*, and from thence in the News-Papers in *Great Britain*.

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The Fort, at the Time of this Insult, was far from being in a proper State of Defence. For many Years preceding, it had only been regarded as the Place of the Governor's Residence, and every Thing about it had been ordered for the Pleasure and Conveniency of his Family. No Parapet or Breast-works on the Ramparts ; the Men on them all exposed ; the Range of the Flanking Guns every where obstructed by Buildings without the Walls, and other Conveniencies for the Governor's Use. As the Gentlemen of the Council, and the Magistrates of the City, had assured the Lieutenant-Governor that there was no Danger of Riots or Mobs, and thought it imprudent to shew any Diffidence of the People, he suffered the Fort to remain in that State : But notwithstanding this, the Lieutenant-Governor had Force sufficient to have dispersed that most insolent Mob. The only Security they had, was from his Prudence and Humanity. One Discharge of the Artillery and Musketry in the Fort, must have destroyed many Hundreds of them ; and the breaking open his Coach-House and Stables might have justified the Use of Force : But in such Case many more innocent

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cent People must have suffered, than the whole Number of the Guilty. Possibly a Sergeant's Command (as it was thought) might have saved the Governor's Chariot; but perhaps with Bloodshed, as many of the Mob were drunk; and when once Blood is shed no Man can tell where it will end.

Next Day the Mob continued to patrol the Streets; and encouraged by their late Success, they boldly threatened to put every Person in the Fort to Death, and at any Risque to destroy the Stamped Papers lodged there. The Engineers of the Army were then ordered to put the Fort in the best Posture of Defence they could. It was now apparent that the Mob had not been raised only to make a Shew of their Resentment against the Stamp Act. They had sufficiently deterred every Man from attempting to execute any Office under that Act. The Lieutenant-Governor, though determined to preserve the Stamped Papers from Destruction, could not oblige any Person to make use of One of them: Nor did he on any Occasion discover an Inclination to compel an Obedience to the Act by Force. He
thought

thought it necessary that the Officers of Government should exert all their Power and Influence, and that the Appearance of a Military Force should assist to preserve the Peace and Decorum of Government; and to prevent such scandalous and destructive Riots, as had happened in the Neighbourhood.—He thought he would be inexcusable to suffer the Stamps to have been destroyed, while every Thing in his Power had not been done to preserve and protect them.

Works for Defence, and strengthening the Fort, were immediately set about. While these were carrying on, several Gentlemen of the Town came into the Fort, and earnestly pressed the Lieutenant-Governor to declare that he would not distribute the Stamps, but leave that Matter as it stood, till the new Governor arrived; assuring him, that this Declaration would restore Peace and Quietness to the City. This was designed only as a new Insult; for these Gentlemen knew, as every Man in the Town did, that it was not in the Lieutenant-Governor's Power to distribute one Stamp. No Man would accept

had not the Directors of the Mob entertained Hopes, from the Concessions already made, to reduce the Lieutenant-Governor to the lowest Abjectness. The Mob were set upon a new Demand, that the Stamped Papers should be sent on board One of the King's Ships.

As no Reason could be given for this Measure, but that the Mob would have it so, and several very strong Reasons appeared against it. The Lieutenant-Governor was not of Opinion that Captain *Kennedy* should be desired to take the Stamps on Board; but the Gentlemen of the Council thinking otherwise, he wrote to Captain *Kennedy*, informing him of their Desire, without joining in it. Captain *Kennedy* urged that the Stamped Papers were more safe in the Fort, than they could be on board any of the Frigates;—that the Season of the Year would very soon oblige the Ships to haul to the Wharfs, and that then both the Papers and the Ships might be exposed to the Mob; and therefore he thought it unadvisable to put them on board.

As the Cannon on the Batteries might be turned against the Fort, they were at this Time ordered to be spiked, as was likewise all the Artillery belonging to the Army which had not been brought into the Fort. That this was not an unnecessary Precaution, will appear from the Declaration which the Council made, that the City was in the utmost Confusion and Anarchy;—that the Magistrates had no Power over the People;—and that they feared an Attempt on the Fort would be actually made.

Every thing was prepared in the Fort for a Defence. Numbers of the Gentlemen of the Town came in at several Times to propose some Method of Accommodation: They had full Opportunity of discovering the old Man's Disposition of Mind: Fear was very evident in the Countenances of those, who the Day before expected to frighten the Lieutenant-Governor into the most abject Compliances. Nothing now remained, but to save their Credit in some Manner with the Mob, and to appease their Fury; which many of the principal Gentlemen then declared they feared would

end in a general Pillaging of the Town: For this Purpose the Corporation in a Body attended the Lieutenant-Governor, and prayed that he would deliver the Packages of Stamped Papers to them, and they would answer for their Safety. He would gladly have done this when the Ship arrived with them; but he would then have been thought mad to propose it. He being still extremely desirous to deliver up the Administration in Peace to his Successor, answered, that he would advise with the Council on this Proposal.

The Council being immediately called, the Lieutenant-Governor informed them of the Proposal made by the Corporation; at the same Time observing to them, that the Effect of yielding to unreasonable Demands, was only to draw on still more Insults; and that he could not conceive where these would end. He pressed in the most urgent Manner, that the Gentlemen of the Town should unite with the Magistrates; being fully persuaded, that if they would act with Spirit, they could immediately suppress the Mob, and restore the Honour and Peace of
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the City. He urged the same to every Citizen who came in to him ; and offered, if they would associate, to appoint such Officers to command them as they thought fit. The Gentlemen of the Council, however, unanimously advised him to comply with the Desire of the Corporation : He thought it necessary, for his farther Justification, to ask the Advice of the General of his Majesty's Forces, by a Letter to him. The General in his Answer concurred with the Advice of the Council. The Packages of Stamps were delivered to the Corporation, on their obliging themselves in Writing to make good all that should be destroyed, lost, or sent out of the Province, at the Value they could have produced by the Distribution of them.

The Lieutenant-Governor had informed the Secretary of State, that he had it much at Heart to deliver up the Government to his Successor in Peace and Quietness. In no one Instance did he compel an Obedience to the Act of Parliament ; he only defended himself against a Force employed to make
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him disobey a Law which he thought obligatory.

The Packages were delivered to the Corporation on the Fifth of *November*; after which all Threatening ceased, and the City remained quiet until Sir *Henry Moore* arrived on the 13th. The Lieutenant-Governor immediately removed from the Fort to his Grandson's House in the Town, where he stayed some Days, and walked the Streets several Times, without having the least Disrespect shewn to him by any Person: Afterwards he retired to his Country House, about Fifteen Miles from the Town, where he has remained without the least Disturbance in any Shape.

That a dangerous Faction does now actually subsist in *New-York*, is evident from what precedes; but is more strikingly so by the Calumnies which have been wickedly insinuated in a Weekly-Paper, in such manner as deprives an honest Man of every proper Method of Defence. These Papers clearly shew how willing the Authors are to expose every Slip or Fault in the Lieutenant-Governor's

Governor's Conduct ; and when they have not been able to shew any, except as above-mentioned relating to the Judges Commissions, Appeals to the King, and his Deference to an Act of Parliament, it may have some Weight in Favour of the Lieutenant-Governor with candid Enquirers.

Among other Falshoods industriously propagated to prejudice the Lieutenant-Governor, his Enemies have reported that he made a large Sum of Money while he had the Administration ; and that he took himself, or gave to his Family, such a Quantity of Land, as must in Time become a very great Estate : In Answer to which it is asserted, that he did not receive a single Shilling, but from the public Offices where the Governor's Fees are usually paid ;—that the same Fees, and no greater, were taken during his Administration than had been paid for Forty Years before : That neither he, nor any One of his Family, received a Reward of any Kind, directly, or indirectly, for any Favour or Service, except the Fees abovementioned ;—that he did not take to himself, by any Way, a single Acre of Land
while

while he had the Government ; and that what he gave to all his Family together, is so very trifling as not to be worth mentioning. In truth, he may much rather be blamed for having entirely neglected any Advantage of this kind for himself or his Family. Gentlemen, who were Governors in Chief immediately before Mr. *Colden*, know they could not support the Dignity of a Governor in a tolerable Manner, upon the whole Salary and Perquisites of the Government. Is it possible he could save a large Sum out of the Half of them ? He paid one Half of all he received to the Governor in Chief, during the greatest Part of his Administration ; and had it not been for the Advantages he received from the Fees for the Grants of Land, the Half-Salary, and other Perquisites, would have fallen far short of his Expences. The most malicious Caviller is challenged upon the Truth of these Assertions.

The Loss which the Lieutenant-Governor sustained on the First of *November* 1765, is notoriously known. The usual Support of Government ceased the First of *September*
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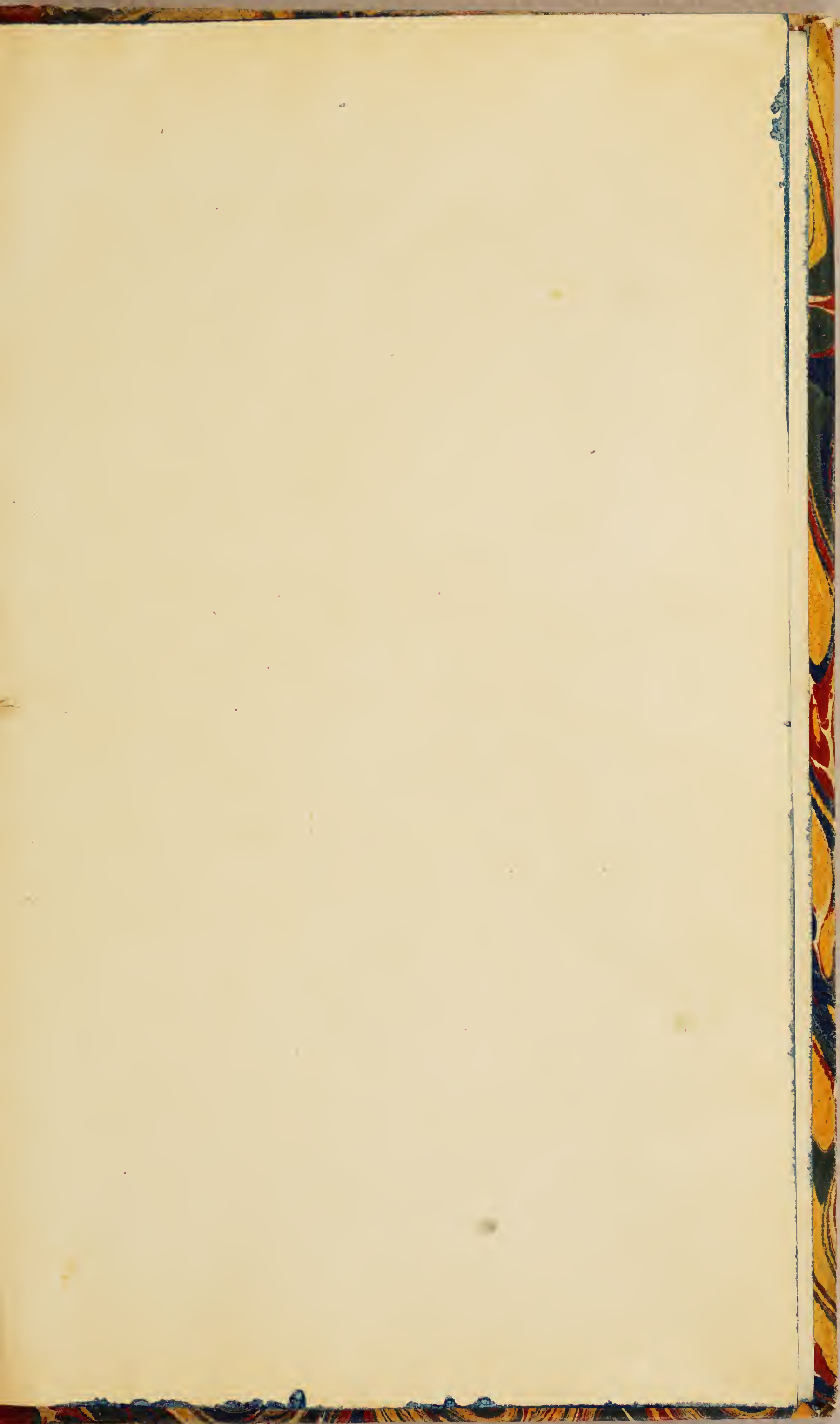
preceeding, and thereby the Lieutenant-Governor had no Salary from that Time to the 13th of *November*, the Day Sir *Henry Moore* arived. In that Time the unavoidable Expence attending the Administration was much greater than at other Times it could be. The Salary in that Time, with the Loss the Lieutenant-Governor sustained, amounted to Five Hundred and Ninety-Five Pounds, Three Shillings.

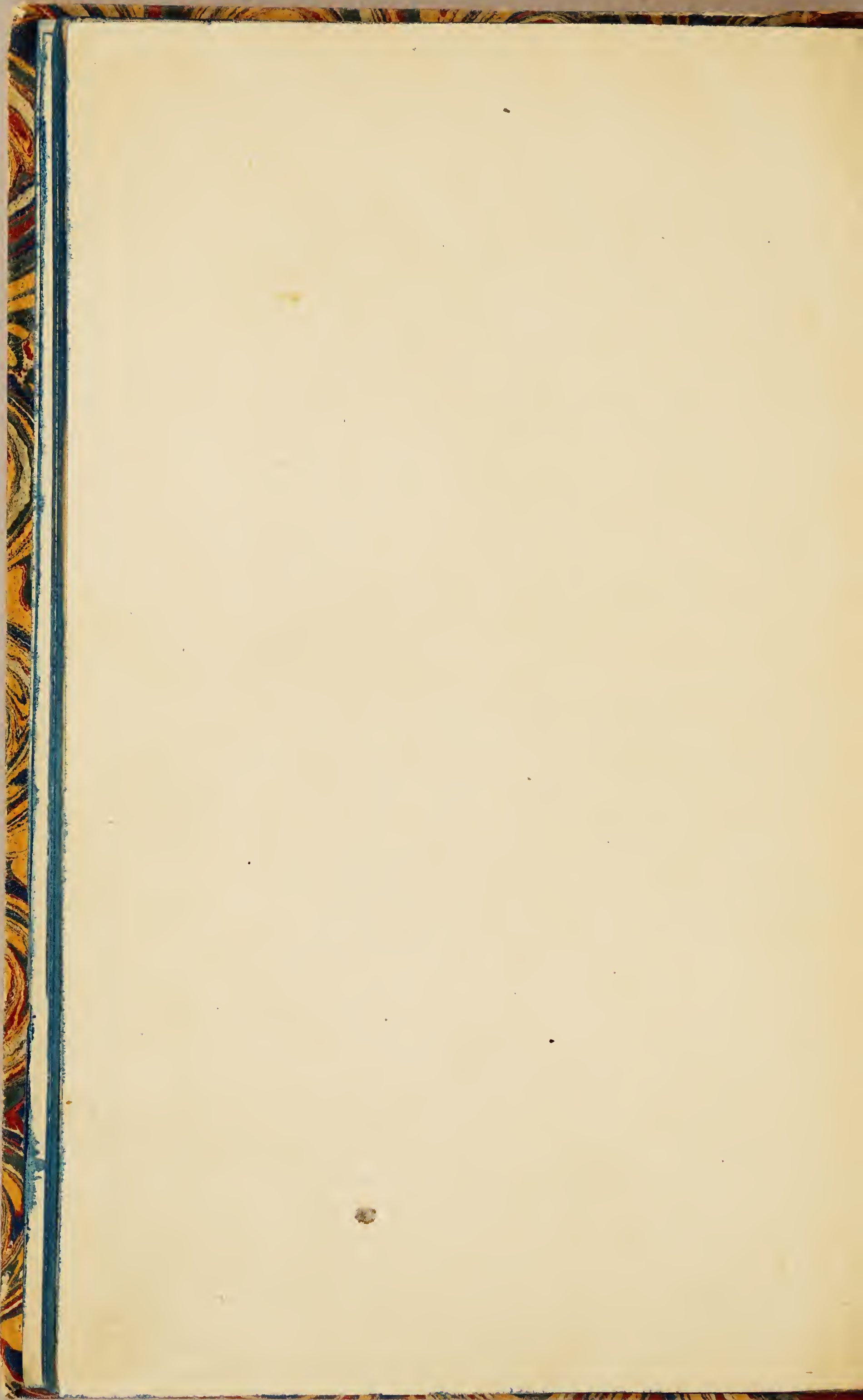
The Assembly of *New York* met in *June* last. Sir *Henry Moore*, in his Speech to them, by his Majesty's Command recommended to them to make good the Losses any Person had sustained by his Deference to the Act of Parliament imposing a Stamp Duty in the Colonies, pursuant to a Resolution of the House of Commons of *Great Britain*. The Lieutenant-Governor sent, in a Letter to the Speaker of the Assembly, a particular Account of his Losses, certified as usually done in like Cases : It was received by the House, as appears on their Minutes, but was not in any manner proceeded on, and thrown aside.

No-where in the Colonies were the Insults on Government so daring as at *New York*.—No Commander in Chief, besides Mr. *Colden*, suffered any personal Loss. He can challenge any Man to shew any Provocation, or any Reason why he has been treated with such Indignity, besides what is before mentioned. If he suffer without any Recompence, his Majesty's Servants in *America* may for the future be deterred from their Duty, and from giving proper and necessary Information to his Majesty's Ministers.

The Facts herein set forth are averred to be strictly true; and may, the most Part of them, appear from Papers in the Secretary of State's Office, and the Plantation Office.—The reasoning Part is submitted to the Reader's Judgment; in which an honest Man may innocently err, without giving just Cause of Offence.

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